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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

GLENN SCATTERGOOD,

Plaintiff and Appellant,

v.

SALE-IN-BOX, INC. AND SCOTT ERIC  
TOLAND,

Defendant and Respondent.

2d Civil No. B234378  
(Super. Ct. No. 56-2010-00378430-CU-  
BC-VTA)  
(Ventura County)

Glenn C. Scattergood appeals from the judgment of dismissal entered after the trial court sustained without leave to amend the demurrers of respondents Sale-In-A-Box, Inc. (SALE) and Scott Eric Toland. We affirm.

*Procedural History*

On July 26, 2010, appellant filed against respondents a complaint consisting of 13 causes of action: (1) breach of oral contract, (2) breach of written contract, (3) breach of the implied covenant of good faith and fair dealing, (4) breach of fiduciary duty, (5) violation of section 25504 of the Corporations Code, (6) violation of section 25504.1 of the Corporations Code, (7) fraud, (8) promissory fraud, (9) negligent misrepresentation, (10) violation of the Unfair Competition Law, (11) rescission, (12) constructive trust, and (13) declaratory relief.

Respondents demurred to all of the causes of action except the eighth, tenth, twelfth, and thirteenth. The trial court sustained the demurrer without leave to amend on the first through sixth causes of action. It sustained the demurrer with leave to amend on the seventh, ninth, and eleventh causes of action.

In November 2010 appellant filed a first amended complaint consisting of the seven remaining causes of action. Respondents demurred to all of the causes of action. The trial court sustained the demurrer with leave to amend.

In February 2011 appellant filed a second amended complaint alleging the same seven causes of action as the first amended complaint. Respondents again demurred to all of the causes of action. The trial court sustained the demurrer without leave to amend.

#### *Facts*

"We recite the facts as they are alleged in the [original and second amended] complaint because the standard of review for a ruling on a demurrer requires that we 'assume that the complaint's properly pleaded material allegations are true.' [Citation.]" (*Department of Corporations v. Superior Court* (2007) 153 Cal.App.4th 916, 922, fn. 2.) Our summary of the facts does not take into account Exhibit A to the original complaint. As we discuss below, this exhibit conflicts with some of the complaints' allegations.

Appellant and Denise Scattergood (wife) married in November 1987 and separated in January 2008. For many years they resided in New Jersey. In December 2004 they moved to California because wife accepted an offer of employment with SALE in Ventura County.

Toland was the controlling shareholder and president of SALE. To induce wife to accept SALE's offer of employment, Toland agreed that, as part of her compensation, she would receive a 10 percent ownership interest in the company's stock. The agreement was incorporated into a written employment contract signed by wife.

Toland orally agreed that SALE would reimburse appellant and wife for their moving expenses. Appellant and wife incurred moving expenses of \$6,503, which SALE refused to pay to appellant.

In September 2005 Toland requested that appellant and wife make a "cash 'investment' " in SALE. Pursuant to Toland's request, in October 2005 appellant and wife purchased from SALE an additional 9.99 percent of the company's stock. They paid \$175,000 out of community property funds. Payment was made by a cashier's check payable to Toland personally. The purchase brought appellant's and wife's combined stock ownership to 19.99 percent of the outstanding shares. Toland agreed that, "within six months of demand," he would repurchase 9.9 percent of the company's stock for \$175,000. The terms of the transaction were incorporated into a document entitled "Stock Purchase Agreement," which was signed by Toland. The Stock Purchase Agreement was attached to the original complaint as Exhibit A.

In 2006 appellant and wife used community property funds to loan \$18,000 to SALE. Toland promised that he would repay the \$18,000 "upon demand after one year."

In June 2009 wife "commenced cohabitation with . . . Toland." In May 2010 appellant demanded repayment of the \$18,000 loan, but respondents refused to repay it.

In February 2010 appellant demanded that Toland repurchase for \$175,000 the 9.99 percent interest in the company's stock that appellant and wife had purchased in October 2005. Toland refused to make the repurchase.

#### *Standard of Review*

"A demurrer tests the legal sufficiency of the complaint. [Citation.] On appeal from a judgment of dismissal following an order sustaining a demurrer, we examine the complaint de novo in order to ascertain 'whether it alleges facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose.' [Citation.] We give the complaint a reasonable interpretation, reading it as a whole and viewing its parts in context. [Citation.] We assume the truth of the properly pleaded factual allegations, facts that can be reasonably inferred from those pleaded, and facts of which judicial notice can be taken. [Citation.] But we do not assume the truth of pleaded contentions and legal conclusions. [Citation.]" (*In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249, 1263.)

"We review the trial court's denial of leave to amend for an abuse of discretion. [Citations.]" (*In re Social Services Payment Cases*, *supra*, 166 Cal.App.4th at p. 1263.) "[W]e decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse. [Citation.]" (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) "In assessing whether plaintiffs should be allowed leave to amend, . . . [w]e are not limited to plaintiffs' theory of recovery or 'form of action' pled . . . ." (*Id.*, at p. 870.)

" ' "We are not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not its rationale. [Citation.]" [Citation.]" [Citation.]" (*RealPro, Inc. v. Smith Residual Co., LLC* (2012) 203 Cal.App.4th 1215, 1219.) "We will affirm if there is any ground on which the demurrer can properly be sustained, whether or not the trial court relied on proper grounds or the defendant asserted a proper ground in the trial court proceedings. [Citation.]" (*Martin v. Bridgeport Community Ass'n, Inc.* (2009) 173 Cal.App.4th 1024, 1031.)

"[A]n appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness. [Citation.]" (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649-650.) Thus, " 'appellant "has the burden to show either [that] the demurrer was sustained erroneously or that to sustain the demurrer without leave to amend constitutes an abuse of discretion." [Citation.]" [Citation.]" (*Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1485; see also *Everett v. State Farm General Ins. Co.* (2008) 162 Cal.App.4th 649, 655 [" '[w]hile a plaintiff need not request leave to amend in order to preserve on appeal the issue of whether the court abused its discretion in sustaining a demurrer without leave to amend (Code Civ. Proc., § 472c), on appeal the plaintiff does bear the burden of proving there is a reasonable possibility the defect in the pleading can be cured by amendment"].) Appellant "has the burden of . . . overcoming all of the legal grounds on which the trial court sustained the demurrer. [Citation.]" (*Martin v. Bridgeport Community Ass'n, Inc.*, *supra*, 173 Cal.App.4th at p. 1031.) "The reviewing court is not required to examine

undeveloped claims or make appellant's arguments for [him]. [Citation.]" (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 527.)

## ORIGINAL COMPLAINT

### *First Cause of Action*

The first cause of action of the original complaint was for breach of oral agreements by respondents (1) to transfer 10 percent of the company's stock to wife as compensation for her employment, (2) to transfer and repurchase upon demand the additional 9.9 percent of the stock that appellant and wife purchased from the company for \$175,000, and (3) to reimburse appellant and wife for their moving expenses. The trial court ruled that appellant was without standing to enforce the first oral agreement because it was part of wife's employment contract, to which appellant was not a party.<sup>1</sup> The court further ruled that enforcement of the first and third oral agreements was barred by the statute of limitations.

As to the second oral agreement to transfer and repurchase 9.9 percent of the company's stock, the court noted that the complaint's allegations were in conflict with the Stock Purchase Agreement attached as Exhibit A to the complaint. The court declared: "The [Stock Purchase Agreement] plainly indicates that the promise [to transfer and repurchase the stock] ran to [wife] and not [appellant]. [Appellant therefore] lacks standing to enforce this agreement." The Stock Purchase Agreement provides: "I Scott Eric Toland do hereby agree to buy half of Denise Scattergood's 19.99% shares of Sale-In-A-Box, Inc. stock issued to her for the total sum of One Hundred Seventy Five Thousand Dollars (\$175,000.00) within 180 days of her demand to do so." The trial court correctly noted: "Allegations in conflict with attached documents may be

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<sup>1</sup> The principle of standing requires: " 'Every action must be prosecuted in the name of the real party in interest . . . ' (Code Civ.Proc., § 367.) 'Generally, 'the person possessing the right sued upon by reason of the substantive law is the real party in interest.' [Citations.]' [Citation.] It follows that '[s]omeone who is not a party to [a] contract has no standing to enforce the contract . . . ' [Citation.]" (*Gantman v. United Pacific Ins. Co.* (1991) 232 Cal.App.3d 1560, 1566.)

disregarded." (See *Duncan v. McCaffrey Group, Inc.* (2011) 200 Cal.App.4th 346, 360 ["For purposes of a demurrer, we accept as true both facts alleged in the text of the complaint and facts appearing in exhibits attached to it. If the facts appearing in the attached exhibit contradict those expressly pleaded, those in the exhibit are given precedence."].)

In his opening brief, appellant discusses only the oral agreement to repurchase 9.9 percent of the company's stock. He argues that enforcement of the repurchase agreement was not barred by the statute of limitations. But the trial court concluded that the statute of limitations did not bar enforcement of the repurchase agreement: "[A]s to all of the alleged oral agreements, with the exception of the alleged repurchase agreement, enforcement is barred by the statute of limitations." As to the repurchase agreement, the court sustained the demurrer because appellant did not have standing to enforce it. Appellant does not discuss the standing issue. He has therefore failed to carry his burden of showing that the trial court erroneously sustained the demurrer without leave to amend on the first cause of action.

### *Second Cause of Action*

The second cause of action was for breach of written contracts (1) to deliver 10 percent of the company's stock to wife, (2) to deliver 9.9 percent of the company's stock to appellant and wife, and (3) to repurchase upon demand the 9.9 percent for \$175,000. For the same reasons that appellant lacked standing to enforce the oral agreements involving these matters, the trial court ruled that appellant also lacked standing to enforce the written contracts.

Appellant discusses only Toland's alleged breach of the Stock Purchase Agreement to repurchase 9.9 percent of the company's stock from him upon his demand. But the actual agreement (Exhibit A) shows that Toland agreed to repurchase wife's stock from her upon her demand. In February 2010, when wife was cohabiting with Toland, appellant alone demanded that Toland repurchase the stock. Appellant, therefore, has failed to carry his burden of showing that the trial court erroneously sustained the demurrer without leave to amend on the second cause of action. (See *Performance*

*Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659, 666-667 [complaint alleged that insurer was a party to settlement agreements, but trial court was not bound to accept allegation as true because actual settlement agreements did not mention insurer].)

#### *Third Cause of Action*

The third cause of action was for breach of the "implied covenant of good faith and fair dealing that exists in connection with both [wife's] Written Contract [of employment] and the Stock Purchase Agreement." The court ruled: "For the same reasons that [appellant] may not sue to enforce these contracts, [he] may not sue to enforce the covenant of good faith and fair dealing implied in these agreements." Appellant has failed to show that the trial court erred. His brief devotes only one paragraph to this issue. That paragraph discusses general principles of law without applying them to the facts.

#### *Fourth Cause of Action*

The fourth cause of action was against Toland. It alleged that he had "breached [his] fiduciary duty to [appellant] by failing to make full disclosure of all material facts concerning the transactions that might have affected [appellant's] decision to agree to accept [respondents'] offer of employment to [wife] including, but not limited to, the decision of [appellant] . . . to make a further investment in SALE in the amount of \$175,000." The trial court ruled that, under the facts alleged in the complaint, Toland "owed no fiduciary duty to [appellant]."

" 'To establish a cause of action for breach of fiduciary duty, a plaintiff must demonstrate the existence of a fiduciary relationship.' [Citation.]" (*Shopoff & Cavallo LLP v. Hyon* (2008) 167 Cal.App.4th 1489, 1509.) The fourth cause of action alleged that Toland had "assumed a fiduciary position in relation to [appellant] as investment advisor[] and controlling shareholder of SALE." Toland's alleged role as investment advisor to appellant is a bald conclusion that the courts are not required to accept as true. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

On the other hand, as the controlling shareholder of SALE, Toland owed a fiduciary duty to minority shareholders. "[M]ajority shareholders . . . have a fiduciary responsibility to the minority and to the corporation to use their ability to control the corporation in a fair, just, and equitable manner. Majority shareholders may not use their power to control corporate activities to benefit themselves alone or in a manner detrimental to the minority." (*Jones v. H. F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 108.) The fiduciary duty of controlling shareholders extends to dealings in their own stock: "The rule applies . . . to . . . controlling shareholders in the exercise of powers that are theirs by virtue of their position and to transactions wherein controlling shareholders seek to gain an advantage in the sale or transfer or use of their controlling block of shares." (*Id.*, at p. 110.)

Appellant argues that, as controlling shareholder, "Toland had a fiduciary duty to make good on his personal guarantee [to repurchase on demand 9.9 percent of the company's stock for \$175,000], especially since the cashier's check for \$175,000.00 [used to purchase the 9.9 percent in October 2005] was payable to him personally! By failing to honor his personal guarantee he benefitted personally as a result of his breach of his fiduciary duty owed to a minority shareholder." (Bold omitted.) This argument is flawed for several reasons. First, as the Stock Purchase Agreement shows, Toland's personal guarantee was made to wife, not appellant. Second, Toland did not breach the guarantee because it required him to repurchase wife's stock upon her demand, and wife never demanded that Toland repurchase her stock. Third, the guarantee did not involve dealings in Toland's controlling block of shares or the use of his power to control corporate activities. Fourth, pursuant to the Stock Purchase Agreement, appellant was not a minority shareholder because the shares were issued to wife. The Stock Purchase Agreement provides that Toland will "buy half of Denise Scattergood's 19.99 % shares of Sale-In-A-Box, Inc. stock issued to her . . . within 180 days of her demand to do so."



### *Fifth and Sixth Causes of Action*

The fifth cause of action alleged that, in violation of Corporations Code section 25401, respondents had made material misrepresentations in connection with the sale of securities to appellant and wife. Section 25401 provides: "It is unlawful for any person to offer or sell a security in this state . . . by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

The fifth cause of action does not state the nature of respondents' material misrepresentations. In his brief, appellant contends that respondents failed to disclose "that no permits or exemptions permitting the transfer of common voting stock . . . to [appellant] had been obtained." Appellant argues that the failure to secure the necessary permits or exemptions violated Corporations Code section 25110.<sup>2</sup>

The sixth cause of action alleged that, in violation of Corporations Code section 25504.1, Toland had "materially assisted in . . . SALE's violation of Corporations Code § 25401 with the intent to deceive or defraud [appellant]." Section 25504.1 provides: "Any person who materially assists in any violation of Section . . . 25401 . . . with intent to deceive or defraud, is jointly and severally liable with any other person liable under this chapter for such violation."

Because the fifth and sixth causes of action did not state the nature of SALE's material misrepresentations, they lacked "the specificity necessary to survive a demurrer." (*Unterberger v. Red Bull North America, Inc.* (2008) 162 Cal.App.4th 414, 423.) The trial court, however, did not rely upon the lack of specificity in sustaining the

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<sup>2</sup> Corporations Code section 25110 provides in relevant part: "It is unlawful for any person to offer or sell in this state any security in an issuer transaction . . . unless such sale has been qualified under Section 25111, 25112 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in effect with respect to such qualification) or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part."

demurrer without leave to amend. The trial court reasoned that appellant did not have standing to "pursue [the fifth and sixth causes of action] because he was not a party to the transaction by which the shares were transferred."

Once again, appellant has failed to carry his "burden of . . . overcoming all of the legal grounds on which the trial court sustained the demurrer. [Citation.]" (*Martin v. Bridgeport Community Ass'n, Inc., supra*, 173 Cal.App.4th at p. 1031.) The Stock Purchase Agreement evidences the issuance of stock solely to wife, who has the exclusive right to demand repurchase by Toland. " 'If the facts appearing in the attached exhibit contradict those expressly pleaded, those in the exhibit are given precedence.' [Citation.]" (*Duncan v. McCaffrey Group, Inc., supra*, 200 Cal.App.4th at p. 360.) Since the stock was issued to wife, only she had standing to sue for a violation of Corporations Code sections 25401 and 25504.1. Corporations Code section 25501 provides: "Any person who violates Section 25401 shall be liable to *the person who purchases a security from him . . .*, who may sue either for rescission or for damages (if the plaintiff or the defendant, as the case may be, no longer owns the security) . . . ." (Italics added.)

Moreover, the allegations in the complaint show that, as a matter of law, the issuance of stock to wife was a private placement that was exempt from the qualification requirement of Corporations Code section 25110. The exemption existed because (1) wife had a preexisting business relationship with SALE and Toland, (2) the securities were purchased as an investment and not with a view to reselling them, and (3) no advertisements were published in connection with the sale. (Corp. Code, § 25102, subd. (f).)<sup>3</sup>

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<sup>3</sup> Corporations Code section 25102, subdivision (f) provides in relevant part: "The following transactions are exempted from the provisions of Section 25110: . . . [¶] (f) Any offer or sale of any security in a transaction . . . that meets each of the following criteria: [¶] (1) Sales of the security are not made to more than 35 persons, including persons not in this state. [¶] (2) All purchasers either have a preexisting personal or business relationship with the offeror or any of its partners, officers, directors or controlling persons . . . . [¶] (3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account . . . and not with a view to or for sale in

## SECOND AMENDED COMPLAINT

### *First Cause of Action*

The first cause of action of the second amended complaint was for fraud. Appellant alleged that, when SALE sold 9.9 percent of the company's stock in October 2005, it had fraudulently failed to disclose "that no permits or exemptions permitting the transfer of common voting stock of . . . SALE to [appellant] had been obtained."

The trial court ruled that the first cause of action was barred by the statute of limitations. Appellant does not discuss this issue. Thus, appellant has failed to establish error by the trial court. Furthermore, as discussed above, the issuance of the 9.9 percent was exempt from the qualification requirement of Corporations Code section 25110. (Corp. Code, § 25102, subd. (f).)

### *Second Cause of Action*

The second cause of action for promissory fraud was against Toland. It alleged that Toland had fraudulently promised (1) to transfer 10 percent of SALE's stock to wife, (2) to transfer 9.9 percent of SALE's stock to appellant and wife, and (3) to repurchase on demand the 9.9 percent "*from either or both [appellant] and/or [wife].*" (Italics added.) In his brief, appellant's argument is limited to the allegedly fraudulent promise to repurchase 9.9 percent of the company's stock from either appellant or wife. But the Stock Purchase Agreement required Toland to repurchase the 9.9 percent only from wife upon her demand, and wife never made the requisite demand.

Appellant notes that his second amended complaint alleged that Toland's promise to repurchase the 9.9 percent from either appellant or wife was an "oral promise . . . made in addition to his written promise as set forth in the Stock Purchase Agreement." Appellant contends that "the oral promise was not merged into the written contract, the Stock Purchase Agreement, because the written contract is not an integrated contract and should not be interpreted as the final expression of the mutual intent of the parties." But

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connection with any distribution of the security. [¶] (4) The offer and sale of the security is not accomplished by the publication of any advertisement."

the original complaint did not allege that Toland had made an oral promise that differed from his written promise in the Stock Purchase Agreement. The original complaint alleged that the Stock Purchase Agreement set forth the "personal guarantee from . . . Toland" to repurchase the stock as "requested by [appellant] and [wife]."<sup>4</sup> "If the second amended complaint contradicts or omits facts pleaded in [appellant's] first two complaints, we will take judicial notice of the earlier complaints and disregard inconsistent allegations, absent an explanation for the inconsistency. [Citations.]" (*Holland v. Morse Diesel Intern., Inc.* (2001) 86 Cal.App.4th 1443, 1447.) Appellant has failed to explain the inconsistency between the original complaint and the second amended complaint. Accordingly, the trial court properly granted the demurrer without leave to amend on the second cause of action of the second amended complaint.

### *Third Cause of Action*

The third cause of action for negligent misrepresentation alleged that respondents had impliedly misrepresented to appellant and wife that they "had the legal authority to lawfully transfer and sell the common voting stock of . . . SALE to [appellant] and [wife]." The trial court concluded that this cause of action fails for the same reasons as the first and second causes of action. Furthermore, "the cause of action . . . fails because an implied representation is insufficient to support a cause of action for negligent misrepresentation." Appellant provides no argument explaining why the trial court's analysis was erroneous. In any event, the sale was exempt from the qualification requirement of Corporations Code section 25110. (Corp. Code, § 25102, subd. (f).)

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<sup>4</sup> The original complaint alleged that appellant and wife had requested that Toland "put in writing evidence of [appellant's] and [wife's] ownership of 9.9% of the common voting stock of . . . SALE along with a personal guarantee from . . . Toland that he would repurchase the investment to be made by [appellant] and [wife] in the amount of \$175,000 within six months of demand for such repayment . . . ." The complaint continued: "Toland agreed to these terms . . . and prepared the written document requested by [appellant] and [wife] identified and entitled as a 'Stock Purchase Agreement'. A true and accurate copy of that 'Stock Purchase Agreement' is attached hereto as Exhibit A."

#### *Fourth Cause of Action*

The fourth cause of action alleged unfair business practices in violation of the Unfair Competition Law. (Bus. & Prof. Code, § 17200 et seq.)<sup>5</sup> The cause of action stated that respondents had "falsely, fraudulently and deceitfully represented [appellant] as aforesaid [*sic*] which representations were relied upon by [appellant] resulting in [appellant's] agreement to the employment terms offered by [respondents to wife] and his agreement to move to California and resultant further damage to [appellant]." The trial court ruled that, "[b]ecause [appellant] has not pled a fraudulent business practice, the fourth cause of action must fall."

We agree. "A plaintiff alleging unfair business practices . . . must state with reasonable particularity the facts supporting the statutory elements of the violation. [Citations.] [¶] Demurrer was properly sustained as to this cause of action because the second amended complaint identifies no particular section of the statutory scheme which was violated and fails to describe with any reasonable particularity the facts supporting [the] violation." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.) Moreover, the allegedly fraudulent business practice concerns wife's employment agreement, which appellant lacks standing to enforce.

Finally, as respondents argued in their demurrer to the second amended complaint, the action is barred by the statute of limitations. "An action for unfair competition under Business & Professions Code section 17200 'shall be commenced within four years after the cause of action accrued.' (Bus. & Prof.Code, § 17208.) The 'discovery rule,' which delays accrual of certain causes of action until the plaintiff has actual or constructive knowledge of facts giving rise to the claim, does not apply to unfair competition actions. Thus, 'the statute begins to run . . . irrespective of whether plaintiff knew of its accrual,

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<sup>5</sup> Business and Professions Code section 17200 provides: "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

unless plaintiff can successfully invoke the equitable tolling doctrine.' [Citations.]" (*Snapp & Associates Ins. Services, Inc. v. Malcolm Bruce Burlingame Robertson* (2002) 96 Cal.App.4th 884, 891.) Here, the four-year statute began to run in December 2004 when wife accepted SALE's offer of employment and moved to California. This was more than five years before appellant filed the original complaint in July 2010. Appellant did not allege that the statute of limitations was equitably tolled.

In his brief, appellant alleges that the fraudulent business practice was respondents' failure to inform him "that the proposed sale [or] transfer to him of [company stock] in return for \$175,000 . . . had not been qualified or was otherwise exempted pursuant to California Corporations Code § 25110." But the stock issuance was exempt from the qualification requirement of section 25110. (Corp. Code, § 25102, subd. (f).) Furthermore, the four-year statute of limitations began to run when the stock was issued in October 2005 and expired before the filing of the original complaint in July 2010.

#### *Fifth and Sixth Causes of Action*

The fifth cause of action sought to rescind the agreement to purchase 9.9 percent of SALE's stock for \$175,000. The sixth cause of action sought to impose a constructive trust, in appellant's favor, on funds fraudulently acquired by respondents from appellant and wife. The trial court correctly ruled that these causes of action fail because appellant "has not stated a theory of liability upon which a constructive trust or rescission could be ordered." Moreover, appellant's "purported fifth and sixth causes of action, for ['Rescission'] and . . . 'Constructive Trust,' respectively, are both *remedies*, not causes of action." (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 277, fn. 4.)

#### *Seventh Cause of Action*

The seventh and final cause of action of the second amended complaint sought declaratory relief. Appellant requested "a judicial determination of his rights pursuant to the Oral Contract and pursuant to the Written Contract [wife's employment contract], and in connection with the sale to [appellant] and [wife] of shares of stock in . . . SALE under state and federal law." The court correctly concluded that appellant had failed to state a basis for declaratory relief. (See *Ochs v. PacifiCare of California* (2004) 115

Cal.App.4th 782, 794 [demurrer properly sustained on cause of action for declaratory relief that was "wholly derivative of" other causes of action on which demurrer had been properly sustained].)

*Disposition*

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Mark Borrell, Judge  
Superior Court County of Ventura

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Richard J. Kahdeman, Kahdeman Frost, for Appellant.

Ferguson, Case, Orr, Patterson, Meghan B. Clark, James Q. McDermott, for  
Respondents.